



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



ZONING MAP CHANGE REPORT

Meeting Date: April 6, 2015

Table A. Summary					
Application Summary					
Case Number		Z1400024		Jurisdiction	City
Applicant	1002 and 1006 Ninth Street, LLC			Submittal Date	September 8, 2014
Reference Name		Magnolia Grill		Site Acreage	0.482
Location		1000, 1002, and 1004 Ninth Street, in the northeast quadrant of Ninth Street and West Knox Street			
PIN(s)		0822-14-33-2932, -2937, -34-2042			
Request					
Proposed Zoning		Commercial Neighborhood with a development plan (CN(D))		Proposal	Outdoor seating/dining area
Site Characteristics					
Development Tier		Urban Tier			
Land Use Designation		Commercial, Medium Density Residential (6-12 DU/Ac.)			
Existing Zoning		Commercial Neighborhood (CN), Residential Urban – 5(2) (RU-5(2))			
Existing Use		Retail, vacant			
Overlay		None	Drainage Basin	Falls Lake	
River Basin		Neuse	Stream Basin	Ellerbe Creek	
Determination/Recommendation/Comments					
Staff		Staff determines that, should the plan amendment be approved, this request would be consistent with the <i>Comprehensive Plan</i> and applicable policies and ordinances.			
Planning Commission		Approval, 12-0 on February 10, 2015. The Planning Commission finds that the ordinance request is not consistent with the adopted <i>Comprehensive Plan</i> . However, should the plan amendment be approved, the request would be consistent with the <i>Comprehensive Plan</i> . The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.			
DOST		No comments			
BPAC		See Attachment 7			

## A. Summary

This is a request to change the zoning designation of a 0.482-acre site to accommodate an outdoor dining and seating area for an existing restaurant. The site is located at 1000,

1002, and 1004 Ninth Street, in the northeast quadrant of Ninth Street and West Knox Street (see Attachment 1, Context Map). This site is designated as Commercial (1000 and 1002 Ninth Street) and Medium Density Residential (6-12 DU/Ac.) (1004 Ninth Street) on the future land use map of the Comprehensive Plan. As such, a portion of this request (1004 Ninth Street) is not consistent with the *Comprehensive Plan*. A plan amendment, case A1400008, has been requested to change 1004 Ninth Street to Commercial. If case A1400008 is approved, this zoning map change application would be consistent with the Comprehensive plan and applicable policies and ordinances.

At present, this is a split-zoned site. The existing restaurant encompasses the two parcels closest to the corner of West Knox Street (1000 and 1002 Ninth Street) which are zoned CN. The third parcel (1004 Ninth Street) is vacant and is a residentially-zoned property, RU-5(2), which does not permit restaurant uses. The proposed expansion of the restaurant use to include outdoor seating at 1004 Ninth Street requires that the RU-5(2) parcel be rezoned.

Appendix A provides supporting information.

## **B. Site History**

There has been no recent zoning map change requests associated with this site.

## **C. Review Requirements**

Planning staff has performed a sufficiency review for this Zoning Map Change request (reference UDO Sec. 3.2.4, Application Requirements [general] and 3.5.5, Application Requirements [for a Zoning Map Change]). This staff report presents the staff findings per Sec. 3.5.8, Action by the Planning Director, on the request's consistency with the Unified Development Ordinance and applicable adopted plans.

This review is based primarily on compliance with any applicable laws, plans, or adopted policies of the City Council. Any issues or concerns raised in this report are based on best professional planning practice unless they have a basis in adopted plans, policies, and/or laws.

## **D. Unified Development Ordinance (UDO) Compliance**

This request is consistent with the requirements of the Unified Development Ordinance. The associated development plan (see Appendix A, Attachment 4, Development Plan reduction) provides the required elements for zoning map change requests in the CN(D) district (Sec. 3.5.6.D, Sec. 6.10.1.C). In addition, commitments in excess of UDO requirements have been made (see Appendix D for supporting information):

**Text Commitments.** Text commitments are proffers that commit to requirements in excess of ordinance standards. Text commitments have been proffered to prohibit outdoor music and speakers, prohibit uses (convenience stores with gas sales, retail and commercial drive through facilities, pay day lenders, and vehicle service, limited),

and limit the amount and hours of operation (no use after 10:00 PM) of seating for an outdoor dining area.

**Graphic Commitments.** Graphic commitments include the general location of site access points, the development area; with specification on location of outdoor use area, area that prohibits enclosed buildings, and location of vehicular separation.

**Design Commitments.** Design Commitments are required of zoning requests that include a development plan for nonresidential projects. This request includes commitments that specify the committed design elements proposed for the site.

**Determination.** If the requested CN(D) zoning district is approved, this request would allow for a maximum building area of 20,000 square feet. The existing building is 7,143 square feet.

## E. Adopted Plans

A zoning map change request must be consistent with the *Comprehensive Plan*. As such, other adopted plans have been included by reference in this document. Table E, Adopted Plans, in Appendix E identifies the applicable policies of the *Comprehensive Plan* and other adopted plans included by reference.

**Determination.** The requested CN(D) zoning district would be consistent with the Future Land Use Map of the *Comprehensive Plan*, should the plan amendment (case A1400008) be approved; thus, designating the entirety of the site as Commercial.

The following conditions have been identified on an adopted plan that may be associated with the subject site:

**Long Range Bicycle Plan, Map 4.5.** The *Long Range Bicycle Plan, Map 4.5*, shows this segment of Ninth Street as a proposed shared road. No improvements are shown, or required, along Ninth Street for the proposed zoning. As such, no improvements associated with this condition is required of the development plan.

## F. Site Conditions and Context

**Site Conditions.** This request includes three parcels totaling 0.482 acres located at 1000, 1002, and 1004 Ninth Street. This site is the recently-opened Monuts restaurant, formerly Magnolia Grill and includes the existing nonconforming building (see Section D above) and associated parking developed on 1000 and 1002 Ninth Street. The adjacent parcel at 1004 Ninth Street is currently undeveloped and is partially clear and partially tree-covered.

**Area Characteristics.** This site is located in the Urban Tier on the northeast corner of Ninth Street and West Knox Street (see Attachment 1). Uses in the area are mostly residential; however, this intersection includes nonresidential uses that are considered neighborhood supportive uses such as, place of worship, fire station, and an elementary school. Zoning districts include Residential Urban – 5, and Residential Urban – 5(2).

Appendix F provides a summary of the uses and zoning in the more immediate vicinity of the subject site.

**Determination.** The proposed CN(D) district meets the ordinance requirements in relation to development on the subject site. Each corner of the Ninth Street and West Knox Street intersection is developed as nonresidential uses. Inclusion of 1004 Ninth Street would expand the node. However, any development on this parcel would require project boundary buffers, thus adding protection to the adjacent residential development where none currently exists.

## G. Infrastructure

The impact of the requested change has been evaluated to suggest its potential impact on the transportation system, water and sewer systems, and schools. In each case, the impact of the change is evaluated based upon a change from the most intense development using the existing land use and zoning to the most intense use allowed under the request.

See Appendix G for additional information.

**Determination.** The proposed CN(D) district is consistent with *Comprehensive Plan* policies regarding the infrastructure impacts of transit, utility, drainage/stormwater, schools and water supply. The proposal is estimated to reduce students generated from the site by one student, increase water demand by 1,012 GPD, and increase traffic by 1,706 trips per day from the existing zoning. The existing infrastructure has available capacity to meet these needs.

## H. Staff Analysis

Staff determines that, should the plan amendment be approved, this request would be consistent with the *Comprehensive Plan* and applicable policies and ordinances. If the requested CN(D) zoning designation were approved a maximum of 20,000 square feet of floor area would be permitted.

## I. Contacts

Table I. Contacts		
<b>Staff Contact</b>		
Amy Wolff, Senior Planner	Ph: 919-560-4137, ext. 28235	Amy.Wolff@DurhamNC.gov
<b>Applicant Contact</b>		
Agent: Richard Veno, Horvath Associates, PA	Ph: 919-490-4990	richard.veno@horvathassociates.com

## J. Notification

Staff certifies that newspaper advertisements, letters to property owners within 600 feet of the site and the posting of a zoning sign on the property has been carried out in accordance with Section 3.2.5 of the UDO. In addition, the following neighborhood organizations were mailed notices:

- Inter-Neighborhood Council
- Partner's Against Crime – District 2
- Fayetteville Street Planning Group
- Friends of Durham
- Old West Durham
- Unity in the Community for Progress
- Ellerbee Creek Watershed Association

## K. Summary of Planning Commission Meeting February 10, 2015 (Case Z1400024)

**Zoning Map Change Request:** 0.482 acres located at 1000, 1002, and 1004 Ninth Street, in the northeast quadrant of Ninth Street and West Knox Street. Request: Commercial Neighborhood (CN), Residential Urban – 5(2) (RU-5(2)) to Commercial Neighborhood with a development plan (CN(D)) PINS: 0822-14-33-2932, -2937, -34-2042

**Staff Report:** Ms. Rosenberg and Ms. Wolff presented the staff report.

**Public Hearing:** Chair Harris opened the public hearing. One citizen spoke in favor and one against. Chair Harris closed the public hearing.

**Commission Discussion:** Discussion centered on the closing time of 10PM.

**Motion:** Approve Z1400024 with a closing time of 10PM. (Mr. Miller, Mr. Buzby 2<sup>nd</sup>)

**Action:** Motion carried, 12-0.

**Findings:** The Planning Commission finds that the ordinance request is not consistent with the adopted *Comprehensive Plan*. However, should the plan amendment be approved, the request would be consistent with the *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

## L. Supporting Information

Table K. Supporting Information		
Applicability of Supporting Information		
Appendix A	Application	Attachments: <ol style="list-style-type: none"> <li>1. Context Map</li> <li>2. Future Land Use Map</li> <li>3. Aerial Photography</li> <li>4. Development Plan Reduction</li> <li>5. Application</li> <li>6. Submittal and Review History</li> <li>7. BPAC Comments</li> </ol>
Appendix B	Site History	N/A
Appendix C	Review Requirements	N/A
Appendix D	Unified Development Ordinance	Table D1: Designation Intent Table D2: District Requirements Table D3: Environmental Protection Table D4: Project Boundary Buffers Table D5: Summary of Development Plan
Appendix E	Adopted Plans	Table E: Adopted Plans
Appendix F	Site Conditions and Context	Table F: Site Context
Appendix G	Infrastructure	Table G1: Road Impacts Table G2: Transit Impacts Table G3: Utility Impacts Table G4: Drainage/Stormwater Impacts Table G5: School Impacts Table G6: Water Impacts
Appendix H	Staff Analysis	N/A
Appendix I	Contacts	N/A
Appendix J	Notification	N/A
Appendix K	Summary of Planning Commission Meeting	Attachments: <ol style="list-style-type: none"> <li>8. Planning Commissioner's Written Comments</li> <li>9. Ordinance Form</li> <li>10. Consistency Statement</li> </ol>

## Appendix A: Application Supporting Information

Attachments:

1. Context Map
2. Future Land Use Map
3. Aerial Photography
4. Development Plan Reduction
5. Application
6. Submittal and Review History
7. BPAC Comments

## Appendix D: Unified Development Plan Supporting Information

Table D1. UDO Designation Intent	
<b>CN</b>	<b>Commercial Neighborhood</b> – the CN district is established to provide for modest-scale commercial centers in close proximity to residential areas that offer limited commercial uses to satisfy the needs of the surrounding neighborhood; each lot is limited to 20,000 square feet of project floor area. While CN is a commercial district, other uses such as residential and office may also be allowed.
<b>D</b>	<b>Development Plan</b> – the letter “D” following a zoning district indicates that a development plan has been included with a zoning map change request. This designation may be added to any zoning map change request to signify that a conceptual representation of the proposed site has been submitted that indicates how the proposed development could meet ordinance standards. Any significant change to the development plan would require a new zoning petition.

Table D2. District Requirements – CN			
	Code Provision	Required	Development*
Minimum Site Area (square feet)	6.10.1.C	5,000	20,980
Maximum Project Floor Area (square feet)	6.10.1.C	20,000	20,000
Minimum Lot Width (feet)	6.10.1.C	50	50
Maximum Street Yard (feet)	6.10.1.C	15	15
Minimum Side Yard (feet)	6.10.1.C	10	10
Minimum Rear Yard (feet)	6.10.1.C	25	25
Maximum Height (feet)	6.10.1.C	35	35

\*The existing development on the site is a nonconforming structure under the present and proposed zoning district. Redevelopment of the site would require compliance.

Table D3. Environmental Protection			
Resource Feature	UDO Provision	Required	Committed
Tree Coverage	8.3.B3	N/A	None

Table D4. Project Boundary Buffers			
Cardinal Direction	Adjacent Zone	Required Opacity	Proposed Opacity
North	RU-5(2)	0.4/0.6	0.6 (15 feet, width if reduced)
East	RU-5	0.4/0.6	0.6 (15 feet, width if reduced)
South	RU-5(2)	0.4/0.6	0.6 (15 feet, width if reduced)
West	RU-5, RU-5(2)	0.4/0.6	0.6 (15 feet, width if reduced)

Table D5. Summary of Development Plan		
Components	Description	Plan Sheet
Required Information	<b>Intensity/Density.</b> 20,000 square feet maximum floor area	D100
	<b>Building/Parking Envelope</b> has been appropriately identified.	D100
	<b>Project Boundary Buffers</b> have been shown.	D100
	<b>Stream Crossing.</b> None shown.	N/A
	<b>Access Points.</b> Three (3) site access points have been identified.	D100
	<b>Dedications and Reservations.</b> None.	N/A
	<b>Impervious Area.</b> 90% (0.43 acres)	D100
	<b>Environmental Features.</b> None have been identified.	N/A
	<b>Areas for Preservation.</b> None.	N/A
	<b>Tree Coverage.</b> None.	N/A
Graphic Commitments	<ol style="list-style-type: none"> <li>1. Location of three site access points.</li> <li>2. Location of building envelope.</li> <li>3. Location of outdoor use area.</li> <li>4. Location of proposed vehicular separation.</li> <li>5. Location of prohibition of enclosed buildings.</li> </ol>	D100
Text Commitments	<ol style="list-style-type: none"> <li>1. Outdoor music and speakers shall be prohibited.</li> <li>2. The outdoor dining/seating area shall not exceed 50 seats.</li> <li>3. The following uses shall be prohibited on this site: <ol style="list-style-type: none"> <li>a. Convenience stores with gas sales</li> <li>b. Retail and commercial drive through facilities</li> <li>c. Pay day lenders</li> <li>d. Vehicle service, limited</li> </ol> </li> <li>4. Use of the outdoor dining/seating area shall be prohibited</li> </ol>	Cover



Table D5. Summary of Development Plan		
	after 10:00pm.	
<b>SIA Commitments</b>	None Provided.	N/A
<b>Design Commitments</b>	<p><u>Architectural Style</u>: as listed below; may include outdoor structures.</p> <p><u>Roof Lines</u>: flat, hipped or gabled. Outdoor structures will not exceed the height of the existing, adjacent building.</p> <p><u>Building Materials</u>: stucco, synthetic stucco, wood, masonry (brick, decorative concrete, real stone or cultured stone), metal and/or vinyl.</p> <p><u>Distinctive Architectural Features</u>: parapet walls.</p> <p><u>Transition to Context</u>: buildings oriented to face the street yard but will have no intentional design relation to the building designs within the context area. May provide outdoor structures between the adjacent neighborhood commercial to the south and residential area to the north. These structures will have no transition or intentional design relation to the building designs within the context area.</p>	Cover

## Appendix E: Adopted Plans Supporting Information

Table E. Adopted Plans	
<i>Comprehensive Plan</i>	
Policy	Requirement
<b>Future Land Use Map</b>	<p><b>Commercial</b>: Land used primarily for retail, entertainment, office, and services.</p> <p><b>Medium Density Residential (6-12 DU/Ac.)</b>: Land used primarily for residential uses.</p> <p><b>Urban Tier</b>: Generally, land developed with small lot sizes in traditional grid patterns and differing uses in proximity to one another with access to urban services and provides opportunities for infill and redevelopment.</p>
<b>2.2.3a</b>	<b>Urban Tier Development Focus</b> . Ensure that new development enhances the street level experience by requiring that development within the Urban Tier have an urban form with small lot sized and proximity of uses.
<b>2.2.3b</b>	<b>Urban Tier Land Uses</b> : Land uses that shall be allowed include Recreation and Open Space, Residential, Institutional, Commercial, Office, and Industrial.
<b>2.2.3d</b>	<b>Urban Tier Commercial Development</b> : discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” and, pedestrian friendly “linear” corridors of commercial development and infill.
<b>2.2.3e</b>	<p><b>Urban Tier Spacing of Commercial Nodes</b>: Use the following standards when evaluation requests for new commercial development:</p> <ul style="list-style-type: none"> <li>i. Separate distinct nodes of commercial development by a distance of at least one-half mile;</li> <li>ii. Cluster commercial uses at intersections of thoroughfares; and</li> <li>iii. Restrict new, isolated, mid-block commercial uses, unless compatible with surrounding uses.</li> </ul>

Table E. Adopted Plans	
<b>2.3.1a</b>	<b>Contiguous Development:</b> Support orderly development patterns that take advantage of the existing urban services, and avoid, insofar as possible, patterns of leapfrog, noncontiguous, scattered development.
<b>2.3.2a</b>	<b>Infrastructure Capacity.</b> Consider the impacts to the existing capacities of the transportation, water, and sewer systems, and other public facilities and services. Measure from the potential maximum impact of current policy or regulation to the potential maximum impact of the proposed change in policy or regulation.
<b>8.1.2i</b>	<b>Transportation Level of Service Maintenance:</b> Not recommend approval for any zoning map change which would result in the average daily trips exceeding 110% of the adopted level of service standards for any adjacent road, unless the impact on the adjacent roads is mitigated.
<b>8.1.4c and d</b>	<b>Development Review and the Adopted Bicycle Plans:</b> Review development proposals in relation to the 2006 Comprehensive Durham Bicycle Transportation Plan and the Bicycle Component of the most recent adopted Long Range Transportation Plan, and seek dedication or reservation of right-of-way or easements and construction of facilities in conformance with that Plan and Complete Street design standards.
<b>11.1.1a</b>	<b>School Level of Service Standard:</b> The level of service for public school facilities shall be established as a maximum enrollment of 110 percent of the system's maximum permanent building capacity, measured on a system-wide basis for each type of facility.
<b>11.1.1b</b>	<b>Adequate Schools Facilities:</b> Recommend denial of all Zoning Map amendments that proposed to allow an increase in projected student generation over that of the existing zoning that would cause schools of any type to exceed the level of service.
<b>Long Range Bicycle Plan</b>	
Map 4-5 shows a proposed shared road this segment of Ninth Street.	

## Appendix F: Site Conditions and Context Supporting Information

Table F. Site Context			
	Existing Uses	Zoning Districts	Overlays
<b>North</b>	Residential	RU-5(2)	N/A
<b>East</b>	Residential	RU-5	N/A
<b>South</b>	Residential, Place of Worship	RU-5(2)	N/A
<b>West</b>	School, Fire Station	RU-5	N/A

## Appendix G: Infrastructure Supporting Information

Table G1. Road Impacts		
Broad Street is the major road impacted by the proposed zoning change. There are no scheduled NCDOT roadway improvement projects in the area.		
Affected Segments		Broad Street
Current Roadway Capacity(LOS D) (AADT)		13,300
Latest Traffic Volume (AADT)		13,000
Traffic Generated by Present Designation (average 24 hour)*		473
Traffic Generated by Proposed Designation (average 24 hour)**		2,179
Impact of Proposed Designation		+1,706

Source of LOS Capacity: FDOT Generalized Level of Service Volume Table 4-1 (2012);

Broad Street: 2-lane undivided city/county class II arterial with left-turn lanes

Source of Latest Traffic Volume: 2013 NCDOT Traffic Count Map

\*Assumption (Max Use of Existing Zone) – 1 single-family lot and a 3,642 sf high-turnover (sit-down) restaurant

\*\*Assumption (Max Use of Proposed Zoning) – 17,400 sf of retail

Table G2. Transit Impacts
Transit service is not provided within one-quarter mile of the site.

Table G3. Utility Impacts
This site is served by City water and sewer.

Table G4. Drainage/Stormwater Impacts
The impacts of any change will be assessed at the time of site plan review. The subject site is of sufficient size and shape to accommodate appropriate stormwater facilities that may be required at this time.

Table G5. School Impacts			
The proposed zoning is not estimated to generate any students; the plan commits to nonresidential uses. This represents a reduction of one student from the existing zoning. Durham Public Schools serving the site are E. K. Powe Elementary School, Brogden Middle School, and Riverside High School.			
Students	Elementary School	Middle School	High School
Current Building Capacity	16,794	7,760	10,259
Maximum Building Capacity (110% of Building Capacity)	18,473	8,536	11,285
20 <sup>th</sup> Day Attendance (2014-15 School Year)	16,545	7,465	10,074
Committed to Date (October 2011 – September 2014)	68	19	-35
Available Capacity	1,860	1,052	1,246
Potential Students Generated – Current Zoning*	1	0	0
Potential Students Generated – Proposed Zoning**	0	0	0
Impact of Proposed Zoning	-1	0	0

\*Assumption- (Max Use of Existing Zoning) – CN: 3 apartments; RU-5(2): 2 units

\*\*Assumption- (Max Use of Existing Zoning) – CN(D): No residential identified/not permitted

Table G6. Water Supply Impacts	
This site is estimated to generate a total of 2,175 GPD if developed to its maximum potential with the proposed zoning district. This represents an increase of 1,012 GPD over the existing zoning district.	
Current Water Supply Capacity	37.00 MGD
Present Usage	27.17 MGD
Approved Zoning Map Changes (October 2011 – September 2014)	0.13 MGD
Available Capacity	9.70 MGD
Estimated Water Demand Under Present Zoning*	1,163 GPD
Potential Water Demand Under Proposed Zoning**	2,175 GPD
Potential Impact of Zoning Map Change	+1,012

Notes: MGD = Million gallons per day

\*Assumption- (Max Use of Existing Zoning) – CN: 7,143 square-foot retail; RU-5(2): 1 duplex (2 units)

\*\*Assumption- (Max Use of Existing Zoning) – CN(D): 17,400 square-foot commercial use

## **Appendix K: Summary of Planning Commission Meeting**

Attachments:

8. Planning Commissioner's Written Comments
9. Ordinance Form
10. Consistency Statement